

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
JENNIFER L. NOLDEN, P.A.,	:	LS0708153MED
RESPONDENT.	:	

[Division of Enforcement Case No. 05 MED 118 & 07 MED 224]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Jennifer L. Nolden, P.A.
1801 Waterbend Drive
Verona, WI 53593

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Medical Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Medical Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Jennifer L. Nolden, P.A., Respondent, date of birth February 25, 1970, is licensed by the Wisconsin Medical Examining Board as a physician assistant in the state of Wisconsin pursuant to license number 748, which was first granted February 1, 1994.
2. Respondent's last address reported to the Department of Regulation and Licensing is 1801 Waterbend Drive, Verona, WI 53593.

COUNT I

3. In February of 2005, Respondent was accepted into the Department of Regulation and Licensing's Impaired Professional Procedure (IPP). In making application for IPP, Respondent admitted that between March 2003 and September 2004, she had obtained and used Vicodin, a brand of hydrocodone and a schedule III controlled substance, without the valid order of a practitioner and in violation of law.
4. The controlled substances Respondent was obtaining illegally also included Percocet brand of oxycodone, a Schedule II controlled substance; Fioricet brand of Butalbital, a Schedule III controlled substance; and Soma brand of carisoprodol, a Schedule IV controlled substance. In addition, Respondent continued to obtain controlled substances without the valid order of a practitioner during January 2005.

COUNT II

5. Respondent's employment as a physician assistant was suspended in October 2004, and while not employed as a physician assistant, she was not legally authorized to issue prescription orders in February 2005. [Wis. Stat. § 448.21(3) and Wis. Admin. Code § MED 8.08(1)]

6. On February 10, 2005, while still a participant in IPP, Respondent attempted to obtain a controlled substance in violation of law by issuing a prescription order for "Soma generic," a Schedule IV controlled substance, to the name "Jennifer Paulus," which is Respondent's maiden name. Respondent submitted the order to Bergmann's Pharmacy to be filled and dispensed to Respondent.

7. Respondent's participation in IPP was terminated by the Department based on this incident.

COUNT III

8. In July 2007, Respondent was employed as a physician assistant by St. Clare Hospital and Health Services in Baraboo, Wisconsin. On July 3, 2007, Respondent attempted to obtain a controlled substance in violation of law. Respondent wrote a prescription order, dated July 2, for 40 units of Vicodin brand of hydrocodone/APAP, 10/325 mg., a Schedule III controlled substance, to the name "Jennifer Paulus," and on July 3, left the prescription order to be filled at a pharmacy in Verona. Jennifer Paulus is Respondent's maiden name and there was no patient by that name. An employee at the pharmacy recognized Respondent as the person dropping off the prescription and when she returned to receive the medication, she was told she would have to provide identification as the named patient. Respondent left and later called the pharmacy and told them to disregard the prescription.

9. On July 4, 2007, Respondent, using the alias "Joan," called in to a pharmacy in Madison a prescription order with Respondent's name as the patient for Vicodin brand of hydrocodone/APAP, 10/325 mg., a Schedule III controlled substance. Respondent falsely represented to the pharmacy that the prescription was authorized by a physician who works in the St. Clare Emergency Department. Respondent received the Vicodin. Respondent refilled that false prescription on July 6 in Chicago.

ALL COUNTS

10. Respondent may have engaged in other similar conduct from 2003 through July 15, 2007. The discipline imposed by the Order, below, is sufficient to address all of that possible conduct and any criminal conviction resulting from the same or similar conduct occurring prior to July 15, 2007.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02(3), and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by obtaining and attempting to obtain the controlled substances otherwise than in the course of legitimate professional practice and as otherwise prohibited by law, as set out in Counts I, II and III above, has committed unprofessional conduct as defined by Wis. Adm. Code § Med 10.02(2) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

3. Respondent, by writing a prescription while not employed with a supervising physician, as set out in Count I above, has practiced beyond the scope of her license, which is unprofessional conduct as defined by Wis. Admin. Code § MED 10.02(2)(a), (j) & (z) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

IT IS ORDERED that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, effective the date of this Order, that Respondent's license to practice as a physician assistant in the State of Wisconsin is **SUSPENDED** for an indefinite period as described in Section A below. That suspension **MAY BE STAYED** as described in Section B below. In the event that the suspension is stayed, Respondent's license will be **LIMITED** as described in Section C below.

SUSPENSION

- A.1. The license of Jennifer L. Nolden, P.A., to practice as a physician assistant in the State of Wisconsin is **SUSPENDED** for an indefinite period.
- A.2. Respondent shall not engage in the practice of a physician assistant in any capacity unless her suspension is stayed and she is in full compliance with this Order. Respondent shall mail or physically deliver all indicia of registration to the Department Monitor within 14 days of the effective date of this Order. The Department shall then issue limited registration credentials to Respondent.
- A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years of active practice under the terms of this Order, the Board may grant a petition by the Respondent under paragraph D.5. for return of full licensure.
- A.4. The Board may, on its own motion or at the request of the Department Monitor, grant full licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension shall not be stayed for the first three (3) months, but any time after three (3) months the suspension shall be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
 - (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or

(b) Actual notice to Respondent or Respondent's attorney.

- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug and alcohol treatment program at a treatment facility (Treater) acceptable to the Board or its designee. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.

- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.5., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.
- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.
- C.11. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to Treater and the Department Monitor within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Respondent has not provided a release as required by C.9 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provide releases in compliance with state and federal laws.

The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11 ("Approved Program"). A list of Approved Programs is available from the Department Monitor.
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of urine specimens at a random frequency of not less than 52 times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D.5., below.
- C.15. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
- C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11.

Practice Limitations

- C.19. Respondent shall furnish a copy of this Order to all Wisconsin employers immediately upon issuance of this Order or commencement of employment, to any Wisconsin hospital at which she provides professional services and to any prospective Wisconsin employer when Respondent applies for employment as a health care provider.

- C.20. Respondent may work as a physician assistant or other health care provider in a setting in which Respondent has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.
- C.21. Respondent shall practice only in work settings pre-approved by the Board or its designated agent.
- C.22. Respondent shall arrange for her supervising physician to provide formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance. Respondent's supervising physician shall immediately report to the Department Monitor and the Respondent's Supervising Health Care Provider any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or patient.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the supervising physician, the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.
- D.3. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

Change of Treater or Approved Program by Board

- D.4. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order and no such petition for termination shall occur other than in compliance with paragraph A.3. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

- D.6. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

- D.7. Respondent shall pay costs of \$980.00 to the Department of Regulation and Licensing within 120 days of this Order. In the event Respondent fails to timely submit any payment of costs, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

- D.8. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 441.07.

Wisconsin Medical Examining Board

By: Gene Musser MD
A Member of the Board

8/15/07
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
JENNIFER L. NOLDEN, P.A.,	:	LS _____ MED
RESPONDENT.	:	

[Division of Enforcement Case #'s 05 MED 118 & 07 MED 224]

It is hereby stipulated and agreed, by and between Jennifer L. Nolden, P.A., Respondent; Kevin F. Milliken of Relles, Long & Milliken LLP, attorneys for Respondent; and John R. Zwiag, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of pending investigations of Respondent's licensure by the Division of Enforcement (files 05 MED 118 & 07 MED 224). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.

6. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Board accepts the Stipulation, upon issuance of an Order, Respondent's license may be reissued pursuant to the terms of the Order. If the Board does not accept this Stipulation, Respondent's certificates shall be returned to the Respondent with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or her attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

9. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Jennifer L. Nolden, P.A.
Respondent
1801 Waterbend Drive
Verona, WI 53593

Date

Kevin F. Milliken
Relles, Long & Milliken LLP
Attorneys for Respondent
301 N. Broom Street
Madison, WI 53703-5216

Date

John R. Zwig
Attorney for Complainant
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P.O. Box 8935
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Date